

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0037

**Sales and Use Tax
For Tax Year 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax—Application of Payment

Authority: IC 2.5-3-2; IC 6-8.1-9-1

Taxpayer protests the method of application of tax payment.

STATEMENT OF FACTS

Taxpayer is a contractor doing business in Indiana. As the result of an audit, the Department of Revenue ("Department") issued a proposed assessment for use tax for the year at issue. Taxpayer protests that a related company paid sales tax on the transaction. Further facts will be supplied as required.

I. Sales Tax—Application of Payment

DISCUSSION

Taxpayer protests the Department's assessment of use tax for tax year 2003. Taxpayer protests that a related company paid sales tax on the transaction and that it should not be required to pay use tax on the transaction. The use tax is established in IC 6-2.5-3-2, which states:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.
- (b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:
 - (1) is acquired in a transaction that is an isolated or occasional sale; and
 - (2) is required to be titled, licensed, or registered by this state for use in

Indiana.

(c) The use tax is imposed on the addition of tangible personal property to a structure or facility, if, after its addition, the property becomes part of the real estate on which the structure or facility is located. However, the use tax does not apply to additions of tangible personal property described in this subsection, if:

(1) the state gross retail or use tax has been previously imposed on the sale or use of that property; or

(2) the ultimate purchaser or recipient of that property would have been exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

(d) Notwithstanding any other provision of this section, the use tax is not imposed on the keeping, retaining, or exercising of any right or power over tangible personal property, if:

(1) the property is delivered into Indiana by or for the purchaser of the property;

(2) the property is delivered in Indiana for the sole purpose of being processed, printed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property; and

(3) the property is subsequently transported out of state for use solely outside Indiana.

Taxpayer states that a related company paid an equal amount of sales tax on the transaction. Taxpayer's position is that the Department has the right amount of tax and it should simply transfer the amount from the related company's sales tax account to taxpayer's use tax account. Taxpayer believes that this will bring all accounts into balance.

Taxpayer has not referred to any statute, regulation or court case which would allow the Department to transfer funds from one taxpayer to another. The Department is only allowed to deal with each taxpayer by itself. The Department determined, via the audit, that taxpayer should have paid sales tax on the transaction in question. Since taxpayer did not pay sales tax at the time of the transaction, use tax is now due on the transaction. If taxpayer's statement that a related company erroneously paid the sales tax on the same transaction is accurate, then the other company should file a claim for refund as provided in IC 6-8.1-9-1. The Department cannot transfer funds from one taxpayer to another. There is no statute, regulation or court decision which would allow the Department to do so.

FINDING

Taxpayer's protest is denied.

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